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No. 90-1179

Supreme Court, U.S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1990

STATE FARM GENERAL INSURANCE COMPANY,
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
STATE FARM LIFE INSURANCE COMPANY, AND
STATE FARM FIRE AND CASUALTY COMPANY,
Petitioners,
v.
MURIEL E. KRASZEWSKI, DAISY O. JACKSON, AND WILDA TIPTON,
ON BEHALF OF THEMSELVES AND ALL OTHER PERSONS
SIMILARLY SITUATED,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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QUESTION PRESENTED

At the remedies phase of an employment discrimination class action, do district courts have discretion to provide for the accrual of back pay for individual class members as seems appropriate in light of the facts and circumstances of the case?

LIST OF PARTIES

There are no parties to this action other than those identified in the caption of the within action.

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INTRODUCTION

The issue presented by this Petition is a discrete and straightforward remedies question: whether district courts have the discretion to fashion make-whole relief according to the facts and circumstances of the particular case before them. The issue has *nothing* to do with the events that occurred during the liability phase of

this case. The Brief in Opposition obscures this issue through three arguments: (1) attempting to convince this Court that there have been voluminous factual findings that prevent a review of the district court's decision; (2) attempting to convince this Court that State Farm was a "bad employer" who does not deserve to be heard by this Court; and (3) attempting to convince this Court that the district court in fact exercised the discretion sought through this Petition. None of these arguments is valid, and State Farm will briefly address each of them in turn.

I. The District Court's Decision Was Not Based Upon Exhaustive Factual Findings.

The Opposition requested, and obtained, an enlargement of time in order to file an additional one and one-half volumes of material that, although part of the same case, are not relevant to this appeal.[1] The voluminous appendix – which deals largely with the *liability phase* of the case – apparently is intended to suggest that a review of the district court's decision would be inappropriate because it was based on exhaustive factual findings. Nothing could be further from the truth.

The district court's order was based on its understanding of the *law*, not its understanding of the facts. Indeed, at oral argument, the district judge stated:

> It appears to me that the facts favor State Farm and the law appears to favor plaintiffs. . . . I find myself wondering whether I have the discretion to choose one of these two dates [March 15, 1988 or the date of each individual judgment] or to otherwise compromise this dispute.

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[1] Only nine pages of the 296-page appendix pertain to the consent decree which carved out the issue presented to this Court.

The district court felt that it had *no choice* but to order the continuation of back pay accrual to the date of each individual claim hearing, and it is this issue that is raised by the Petition.

II. The Petitioner's Conduct Does Not Justify Denial of This Petition.

Reduced to its core, the Opposition's argument is that State Farm is a "bad employer," not entitled to an equitable evaluation of the date for termination of back pay accrual, and obligated to continue back pay during the "delay" between March 15, 1988 and the date of each settlement or judgment. This argument is inconsistent with the facts and the law.

The facts, as contained in the record, are that after receiving the district court's *Stage I findings*: (1) State Farm substituted new counsel; (2) State Farm appointed women to approximately fifty percent of its Trainee Agent positions in California; (3) the district judge explicitly commended State Farm in its June 8, 1988 Order, stating "We do believe that, following change of counsel, State Farm has 'done equity.' State Farm has committed itself to both compensating harmed individuals and altering its discriminatory conduct" (Appendix to Petition, p. A-18); and (4) State Farm has *agreed* to accrue back pay from a date *five years before the complaint was filed* (July 5, 1974) to the date of class judgment *five years after the close of the Stage I trial* (March 15, 1988), for a total of *thirteen and one-half years* of back pay that is not disputed.[2]

The law provides that equitable decisionmaking under Title VII must reconcile *all* interests, public and private, employer and

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[2] Accruing back pay to the date of class judgment compensates for every delay that is even arguably attributable to State Farm. Any delay caused by the timing of the claim procedure is not due to State Farm, but is the result of the district court's decision to order individual hearings, rather than formula relief.

employee. *See, e.g., Pitre v. Western Electric Co.*, 843 F.2d 1262, 1278 (10th Cir. 1988) (commending the district court for "properly attempt[ing] to balance the employer's and the employees' interests"). The Opposition's presentation on this issue is inaccurate, misleading, and ultimately not helpful to this Court's determination.

III. Neither Lower Court Decision Reflects a Proper Understanding or Application of a District Court's Discretion in Fashioning a Make-Whole Remedy.

Finally, the Opposition attempts to convince the Court that the issue raised in this Petition was addressed by the courts below. The lower court opinions speak for themselves. Neither opinion seriously discusses the applicability of discretion in fashioning a remedy that takes into consideration the facts and circumstances of the particular case. Neither opinion seriously examines the discrepancy created by *mandating* continued back pay accrual in *hearings cases*, yet permitting back pay accrual to terminate at the time of class judgment in *formula relief cases*, while describing *both* as make-whole relief. Instead, the opinions below adopt a presumption that when individual hearings are conducted, back pay *must accrue* through judgment absent compelling circumstances to the contrary.[3] This is precisely the issue State Farm asks this Court to consider.[4]

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[3] The district court's June 8 Order cited *and adopted* the position of Class Counsel that the district judge's discretion was "confined" by a "legal rule" subject only to an exception for "compelling reasons." Such a position does not constitute the exercise of discretion.

[4] The Opposition blatantly attempts to mislead this Court in its statement that "the Claim Procedure Consent Decree *expressly* provides that back pay 'shall be calculated to the date of judgment.'" Brief in Opposition, p. 11. The reality is that the consent decree *expressly provides* that back pay accrual is an *open question* left to litigation and appeal.

CONCLUSION

The Petition presents a narrow remedies issue. State Farm does not ask this Court to determine the appropriate make-whole remedy presented by these particular facts and circumstances. Rather, State Farm asks this Court to affirm that district courts have discretion to order the back pay accrual that they find most equitable in light of the facts and circumstances of each case, and to reverse and remand for further proceedings consistent with this standard.

Respectfully submitted,

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